Supreme Court, U.S.
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(8)

No. 99-1551

IN THE

Supreme Court of the United States

Semtek International Incorporated,

Petitioner,

v.

Lockheed Martin Corporation,

Respondent.

On Writ of Certiorari
to the Court of Special Appeals
to Maryland

JOINT APPENDIX

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COMPLAINT IN MARYLAND ACTION

SEMTEK INTERNATIONAL INCORPORATED 78 Border Road Concord, Massachusetts 01742	:	IN THE
Plaintiffs	:	CIRCUIT COURT
v.	:	
LOCKHEED MARTIN CORPORATION Successor by Merger to MARTIN MARIETTA TECHNOLOGIES, INC. Advanced Development and Technology Operations; AND DOES 1 through 100	:	FOR BALTIMORE CITY
SERVE ON RESIDENT AGENT: Jennifer E. Bashaw 6801 Rockledge Drive Bethesda, Maryland 20718-0000	:	
Defendants	:	Case No:

: : : : :

COMPLAINT

COMES NOW the Plaintiff, SEMTEK INTERNATIONAL INCORPORATED, by their attorneys, Marvin Ellin, Michael P. Smith, Ellin & Baker; Walter J. Lack, Engstrom, Lipscomb & Lack; and Thomas V. Girardi, Girardi & Keese and sues LOCKHEED MARTIN CORPORATION, Successor by Merger to MARTIN MARIETTA TECHNOLOGIES, INC. Advanced Development and Technology Operations; and DOES I through 100.

Factual Background

1. The true names and capacities, whether individual, corporate, associate or otherwise, of DOES 1-100 are unknown to plaintiff, who therefore sues those defendants by those fictitious names. Each fictitiously designated defendants is in

some manner legally responsible or liable for the acts and omissions hereinafter alleged and for any damages awarded in this litigation. Plaintiff will seek leave of court to amend this complaint when the true names and capacities of the fictitiously designated defendants become known.

2. Each defendant is the agent, servant, employee, or joint venturer of each and every other defendant, and in doing the acts or taking the positions alleged herein, was acting within the course and scope of that agency, service, employment, or joint venture.

3. Defendant, LOCKHEED MARTIN CORPORATION is a corporation organized and existing under the laws of one of the United States, and doing business in Maryland, including Baltimore City. LOCKHEED MARTIN CORPORATION is the successor by reason of a merger occurring in approximately August, 1994 to MARTIN MARIETTA TECHNOLOGIES, INC. Advanced Development and Technology Operations [hereinafter MARTIN MARIETTA].

4. The communications and negotiations of contract terms involving the defendants and MERKURIY, LTD. which constituted the inducement to MERKURIY to breach its contract with plaintiff and the interference with plaintiff's prospective economic advantage, as hereinafter set forth, occurred in part in Maryland.

5. Plaintiff SEMTEK INTERNATIONAL INCORPORATED was formed in 1992 for the purpose of engaging in commercial relationships with emerging Russian private enterprises. One of SEMTEK'S principals, Dr. Edward K. Shapiro [hereinafter Shapiro] is a Russian born United States citizen who has maintained regular contact with Russian officials. In late October, 1992, several officers of SEMTEK traveled to Russia to meet with Pyotr Sivirin [hereinafter Sivirin] executive director of MERKURIY LTD. [hereinafter MERKURIY]. MERKURIY had been licensed by the Russian Space Agency to make certain satellites available for

commercial use, including the rental of international communications channels for the transmission of voice, video, or data signals.

6. The October, 1992 meetings led to execution on November 5, 1992 of a document entitled "Business Agreement" by Shapiro on behalf of SEMTEK and by Sivirin on behalf of MERKURIY, whereby both parties agreed to discuss creation of a joint venture to develop and use satellite telecommunications systems in which MERKURIY would provide development and launch capability and SEMTEK would provide financial and marketing. A Copy of the English translation of that Business Agreement is attached as Exhibit 1 hereto and incorporated herein by this reference.

7. In December, 1992, officers of SEMTEK again traveled to Russia, this time accompanied by Michael Garcia, SEMTEK's satellite communications consultant, to meet with Sivirin. On or about December 19, 1992, after three days of meetings, SEMTEK officials, Garcia, and Sivirin on behalf of MERKURIY entered into a written agreement, entitled "Protocol", to form a joint venture for the operation and marketing of satellite communications services. The Protocol obligated SEMTEK to provide adequate financing, marketing, and sale for the venture and obligated MERKURIY to provide functional satellites, ground stations, equipment, maintenance and engineering support to ensure the efficient and effective operation of all satellite systems. SEMTEK and MERKURIY further agreed in the Protocol to engage in activities to market the commercial operation of the Luch Satellite series located at 16 degrees West Longitude along with related ground based systems, and agreed that SEMTEK would prepare a business plan containing identified components with respect to the venture's marketing of that satellite. The Protocol included as a possible option marketing the Luch Satellite then in orbit as well. A copy of that Protocol is attached as Exhibit 2 hereto and incorporated herein by this reference.

8. On February 8, 1993, MERKURIY, acting through Sivirin, authorized SEMTEK to act as its agent for the marketing of communication services for the Luch Satellite. A copy of the English translation of that authorization is attached as Exhibit 3 hereto and incorporated herein by this reference. Also in February, 1993, MERKURIY notified SEMTEK that the Luch Satellite then in orbit could not be part of the joint venture, and the joint venture would involve only future Luch Satellites.

9. Between February 8, 1993 and May 2, 1993, in performance of its obligations under the Protocol, SEMTEK commissioned a detailed marketing study of the satellite communications market by Centrex Communications, Inc., a nationally recognized satellite communications consulting firm. This extensive study confirmed SEMTEK estimates that a substantial current and future market existed for services available through the Luch Satellite configuration.

10. In early May, 1993, following detailed technical discussions in Ottawa and Montreal, SEMTEK officers and Leslie Collins, president of Centrex Communications, met with Sivirin. This meeting resulted in the May 2, 1993 execution by MERKURIY and SEMTEK of a further agreement, entitled "Letter of Intent to Establish a Joint Venture Company Between Merkuriy, Ltd. and Semtek International Incorporated." This agreement set forth in detail the responsibilities of SEMTEK to maintain and staff a United States office for the venture, maintain bank accounts, provide accounting services, direct marketing activities, obtain necessary licenses, permits and legal rights, and contribute 50% of the capitalization. This agreement also set forth in detail the responsibilities of MERKURIY to maintain and staff a Russian office, secure all necessary Russian government approvals, provide all technical and engineering services, operate and maintain the satellite and transponders, provide customer support services, and contribute 50% of the capital in the form of facilities and equipment. The Letter of Intent encompassed the Luch I Satellite, which at that time was

the next generation of satellite yet to launched, and provided that the Joint Venture would have exclusive rights to market communication services on the Luch I Satellite. The Letter of Intent comprised an agreement on all essential terms of the Joint Venture and expressed an intent that MERKURIY and SEMTEK would enter into a formal Joint Venture Agreement by May 31, 1993. A copy of the English translation of that Letter of Intent is attached as Exhibit 4 hereto and incorporated herein by this reference.

11. From February, 1993 through the end of the year, SEMTEK and MERKURIY engaged in continual discussions concerning, among other subjects, the cost of modifications needed for the Luch I Satellite. Also during this time frame, SEMTEK engaged in negotiations with investment banking firms to raise the capital needed to fund the SEMTEK obligations under the Letter of Intent agreement and the Protocol. SEMTEK also prepared the business plan.

12. On or about December 10, 1993, SEMTEK officers met with Sivirin in Washington, D. C. to further refine the satellite modification costs and to review the business plan drafted by SEMTEK for the Joint Venture. At this meeting SEMTEK and MERKURIY agreed that MERKURIY would define a fixed cost for satellite modifications which it would transmit to SEMTEK. SEMTEK delivered the business plan to Sivirin.

13. SEMTEK thereafter continued to refine the business plan, worked with at least three investment banking groups on financing, and began interviewing potential senior management team members to be employed by the Joint Venture.

14. Inasmuch as MERKURIY had not completed certain of its tasks, Sivirin wrote to SEMTEK on February 2, 1994 confirming MERKURIY's intention regarding the founding of a joint venture with SEMTEK, and extending the time for entering a formal joint venture agreement to December 31, 1994. A copy of an English translation of that written confirmation is attached as Exhibit 5 hereto and incorporated herein by this reference.

15. From February, 1994 through June, 1994, SEMTEK continued its work in developing staff for the joint venture, regularly communicated with Sivirin, and formally contracted with the State Street Business Group, an investment banking firm, for the purpose of raising capital for the venture and for financial advisory services. Due diligence for funding had been completed.

16. In May, 1994, Sivirin informed SEMTEK by telephone that MARTIN MARIETTA had expressed interest in the Luch I Satellite project. Sivirin said MARTIN MARIETTA would supply technical assistance to the project, but confirmed that the Joint Venture between MERKURIY and SEMTEK was still on course.

17. On June 12, 1994, SEMTEK invited Sivirin to visit the United States to meet with the proposed Joint Venture management and staff experts SEMTEK had selected, to conclude arrangements for the Joint Venture's business, and to meet with appropriate officials of MARTIN MARIETTA to coordinate the work of each party.

18. On June 20, 1994, at SEMTEK's request, MERKURIY again confirmed in writing the legal validity of the May 2, 1993 Letter of Intent and the February 2, 1994 extension letter, and reaffirmed its intent to create the joint venture for commercial use of the Luch I Satellite in accordance with those agreements. A copy of an English translation of that written confirmation is attached as Exhibit 6 hereto and incorporated herein by this reference.

19. On July 5, 1994, Sivirin sent a telefax to SEMTEK accepting in principle the invitation to meet in the United Sates but requesting a delay of the meeting to give MERKURIY time to settle arrangements with MARTIN MARIETTA for those meetings and to enable Sivirin to complete visa arrangements. In a telephone conversation on that same date, Sivirin indicated for the first time that the SEMTEK/MERKURIY Joint Venture might be in jeopardy due to the involvement of MARTIN